

**08 C 862**

**JUDGE KENNELLY  
MAGISTRATE JUDGE BROWN**

# **EXHIBIT A**

**Part 5 of 14**

**Policy Number:**  
**Liability Coverage Part**

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Various provisions in this policy restrict coverage. Please read the entire policy to determine rights, duties and what is and is not covered.

Throughout this Liability Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Liability Coverage Part. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Please refer to SECTION V - DEFINITIONS.

## **SECTION I - COVERAGE**

### **A. Liability**

#### **1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies. However, if a Retained Limit - Property Damage is shown on the Liability Coverage Part Declarations, this insurance applies in excess of the Retained Limit. We have no obligation to pay damages because of "property damage" unless and until the amount of such damages exceeds this Retained Limit. We will have the right and duty to defend the insured against any "suit" seeking damages for "bodily injury" "property damage," "personal injury" or "advertising injury" to which this insurance applies. We may, at our discretion investigate any "occurrence" or

offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF LIABILITY;
- (2) The Retained Limit - Property Damage shall apply separately to all damages because of "property damage" arising out of any one "occurrence" regardless of the number of persons or organizations who sustain damages arising out of that "occurrence"; and
- (3) Our right and duty to defend end when we have used up the applicable Limit of Liability in the payment of judgments or settlements under SECTION I. A. or used up the applicable Limit of Liability in the payment of medical payments under SECTION I. B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION I. C. Supplementary Payments.

#### **b. This insurance applies to:**

- (1) "Bodily injury" or "property damage":
  - (a) Caused by an "occurrence" that takes place in the "coverage territory"; and
  - (b) That occurs during the policy period;
- (2) "Personal injury" caused by an offense arising out of your business, except "advertising," "publishing," "broadcasting" or "telecasting" done by or for you, that:
  - (a) Was first committed in the "coverage territory"; and

- (b) Was committed during the policy period;
- (3) "Advertising injury" caused by an offense committed in the course of "advertising" your goods, products or services that:
  - (a) Was first committed in the "coverage territory"; and
  - (b) Was committed during the policy period.
- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

## **2. Exclusions Applicable to the Liability Coverage**

This insurance does not apply to:

### **a. Expected or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### **b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of

the contract or agreement. Solely for the purposes of liability assumed in an "insured contract," reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### **c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### **d. Workers' Compensation and Similar Laws**

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law, or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, fetus, embryo, parent, brother, sister, domestic partner, or any member of the household of that "employee" as a consequence of SECTION I. A. 2. e. (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by you under an "insured contract."

### f. Employment Related Practices

"Bodily injury" or "personal injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or

- (4) Consequential "bodily injury" or "personal injury" as a result of SECTION I. A. 2. f. (1) through SECTION I. A. 2. f. (3) above.

This exclusion applies to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

### g. Asbestos

- (1) "Bodily injury," "personal injury" or "property damage" arising out of the actual, alleged or threatened exposure to asbestos or existence of asbestos in any form; and
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, or in any way respond to, or assess the effects of asbestos; or
  - (b) Claim or "suit" by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, or in any way responding to, or assessing the effects of asbestos.

### h. Pollution

- (1) "Bodily injury," "property damage" "personal injury", or "advertising injury" "property damage" arising out of the actual, alleged or threatened existence, discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
  - (i) if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
  - (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

SECTION I. 2. h. (1) (d) (i) of this exclusion does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are

intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

SECTION I. 2. h. (1) (a) and SECTION I. 2. h. (1) (d) (i) of this exclusion do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

SECTION I. 2. h. (1) (d) (i) of this exclusion does not apply to "bodily injury" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.

SECTION I. 2. h. (1)(a) of this exclusion does not apply to "bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location, and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured.

- (2) Any loss, cost, or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way

respond to, or assess the effects of "pollutants"; or

- (b) Claim or "suit" by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."

SECTION I. 2. h(2) of this exclusion does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement or such claim or "suit" by or on behalf of any person or organization or governmental authority.

#### i. Aircraft, "Auto" Snowmobile or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto," snowmobile, or trailer designed for use therewith, or watercraft owned or operated by, or rented, leased or loaned to any insured. Use includes operation and "loading or unloading."

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 75 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking or operating an "auto" on, or on the ways next to, premises you own, rent, or control provided the "auto" is

not owned by, leased, rented or loaned to you or any insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the following equipment:
  - (a) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (b) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

#### j. "Mobile Equipment"

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by, leased, rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

#### k. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

## **I. Professional Services.**

"Bodily injury," "property damage," "personal injury" or "advertising injury" due to rendering or failure to render any professional service by or on behalf of any insured. Professional service includes:

- (1) Legal, accounting, advertising, real estate, travel, consulting or architectural services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3) Supervisory, claim, investigation, adjustment, appraisal, survey, audit, inspection or engineering services;
- (4) Medical, surgical, chiropractic, dental, x-ray or nursing services or treatment, advice or instruction;
- (5) Any health or therapeutic service, treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming or therapy;
- (7) Ophthalmology or optometry services, treatment, advice or instruction, but this exclusion does not apply to services of an optician;
- (8) Ear or any body part piercing services;
- (9) Hearing aid services, treatment, advice, or instruction, but this exclusion does not apply to services of an insured whose operations are those of a retail hearing aid establishment;
- (10) Pharmacy services, treatment, advice, or instruction, but this exclusion does not apply to services of an insured whose

operations are those of a retail druggist, pharmacist or drugstore.

- (11) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardio-vascular fitness, body building or physical training programs.
- (12) Any counseling or advisory services with respect to mental health, crisis prevention, social services, drug and alcohol rehabilitation or similar subjects.

## **m. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of an insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

SECTION I. A. 2. m. (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

SECTION I. A. 2. m. (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

SECTION I. A. 2. m. (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

**n. Damage To "Your Product"**

"Property damage" to "your product" arising out of "your product" or any part of it.

**o. Damage To "Your Work"**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**p. Property Damage To "Impaired Property" or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**q. Recall of "Your Products," "Your Work" or "Impaired Property"**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**r. "Personal Injury" or "Advertising Injury"**

"Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or with the consent of the insured;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or

**s. "Advertising Injury"**

"Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or

- (4) An offense committed by an insured whose business is "advertising," "broadcasting," "publishing" or "telecasting."

#### t. Lead

- (1) "Bodily injury," "personal injury" or "property damage" arising out of the actual, alleged or threatened exposure to or existence of lead, paint containing lead, or any other material or substance containing lead; or
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove or contain, or in any way respond to, or assess the effects of lead, paint containing lead, or any other material or substance containing lead; or
  - (b) Claim or "suit" by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up or removing, containing, or in any way responding to, or assessing the effects of lead, paint containing lead, or any other material or substance containing lead.

With respect to damage by fire to premises while rented to you, or temporarily occupied by you with permission of the owner, only exclusions a., b. and k. apply. With respect to damage other than by fire to premises while rented to you, or temporarily occupied by you with permission of the owner, only exclusions a., b., g., h., k., and t. apply. This insurance for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, applies to those sums that the insured becomes legally obligated to pay as damages caused by or resulting from a Covered Cause of Loss as provided in either the Property Coverage Part or the Tenant Legal

Liability Causes of Loss form which is part of this policy. The Tenant Legal Liability Limit of Liability applies to this coverage as described in SECTION III - LIMITS OF LIABILITY of the Liability Coverage Part.

#### B. Medical Payments

##### 1. Insuring Agreement

- a. We will pay medical payments as described below for "bodily injury" caused by an accident:
    - (1) On premises you own or rent;
    - (2) On ways next to premises you own or rent; or
    - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable Limit of Liability. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## **2. Exclusions Applicable to the Medical Payments Coverage**

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard."
- g. Excluded under SECTION I. A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## **C. Supplementary Payments**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
- 3. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Liability. We do not have to furnish these bonds.

- 4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$500 a day because of time off from work.
- 5. All costs taxed against the insured in the "suit."
- 6. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Liability, we will not pay any pre-judgment interest based on that period of time after the offer.
- 7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.

These payments are not subject to the Limits of Liability.

If we defend you against a "suit" and an indemnitee of you is also named as a party to the "suit," we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which you have assumed the liability of the indemnitee in a contract or agreement that is an "insured" contract;
- b. This insurance applies to such liability assumed by you;
- c. The obligation to defend, or the cost of the defense of that indemnitee, has also been assumed by you in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between your interests and the interests of the indemnitee;
- e. The indemnitee and you ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the

same counsel to defend you and the indemnitee; and

**f.** The indemnitee:

(1) agrees in writing to:

- (a) cooperate with us in the investigation, settlement or defense of the "suit";
- (b) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) notify any other insurer whose coverage is available to the indemnitee; and
- (d) cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) provides us with written authorization to:

- (a) obtain records and other information related to the "suit"; and
- (b) conduct and control the defense of the indemnitee in such "suit."

So long as the above conditions are met, attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph A. 2. b. (2) of EXCLUSIONS, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not be subject to the Limits of Liability.

Our obligation to defend your indemnitee and to pay for attorneys fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable Limit of Liability in the payment of judgments, settlements, or medical payments;

- b. The conditions set forth above, or the terms of the agreement described in paragraph. f. above are no longer met.

**D. Nuclear Energy Liability Exclusion**

1. Coverage provided under SECTION I. A. Liability does not apply:

- a. To "bodily injury," "property damage" or "personal injury," including all forms of radioactive contamination of property;

- (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

- (2) Resulting from the hazardous properties of nuclear material and with respect to which:

- (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or

- (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. Coverage provided under SECTION I. B. Medical Payments does not apply to expenses incurred with respect to "bodily injury" resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

3. Coverage provided under SECTION I. A. Liability, does not apply:
    - a. To "bodily injury," "property damage" or "personal injury," including all forms of radioactive contamination of property, resulting from the hazardous properties of nuclear material if:
      - (1) The nuclear material:
        - (a) Is at any nuclear facility owned by, or operated by or on behalf of an insured; or
        - (b) Has been discharged or dispersed therefrom;
      - (2) The nuclear material is contained in spent fuel or nuclear waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
      - (3) The "bodily injury" or "property damage," including all forms of radioactive contamination of property, arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion, SECTION I. D. 3. a. (3), applies only to "property damage," including all forms of radioactive contamination of property, to such nuclear facility and any property thereof.
  4. As used in SECTION I. D. Nuclear Energy Liability Exclusion:
    - a. Source material, special nuclear material and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- b.** Hazardous properties include radioactive, toxic or explosive properties.
- c.** Nuclear facility means:
- (1) Any nuclear reactor;
  - (2) Any equipment or device designed or used for:
    - (a) Separating the isotopes of uranium or plutonium;
    - (b) Processing or utilizing spent fuel; or
    - (c) Handling, processing or packaging nuclear waste;
  - (3) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of nuclear waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- d.** Nuclear material means source material, special nuclear material or by-product material.
- e.** Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- f.** Spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

- g. Nuclear waste means any waste material:
  - a. Containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and
  - b. Resulting from the operation by any person or organization of any nuclear facility.

## **SECTION II - WHO IS AN INSURED**

1. If you are designated in the Liability Coverage Part Declarations as:
  - a. An individual, you and your spouse are insured, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers. This section also applies to any Employee Benefits Liability Additional Coverage endorsement that is part of this policy.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your "employees," other than either your "executive officers" (if you are an

organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

- (1) "Bodily injury" or "personal injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members, (if you are a limited liability company), to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
  - (b) To the spouse, child, fetus, embryo, parent, brother, sister, domestic partner, or any member of the household of the co-"employee" as a consequence of Section II. 2. a. (1) (a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in SECTION II. 2. a. (1) (a) or SECTION II. 2. a. (1) (b) above; or
  - (d) Arising out of his or her providing or failing to provide any professional health care or therapeutic services, advice, or instruction. However, we will consider an employee to be an insured when providing:
    - i. services of an optician;
    - ii. hearing aid services, treatment, advice, or instruction, if your operations are those of a retail hearing aid establishment; or

iii. pharmacy services, treatment, advice, or instruction, if your operations are those of a retail druggist or drugstore;

(2) "Property damage" to property:

- (a) owned, occupied or used by,
- (b) Rented, leased or loaned to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees," any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any persons who are volunteer workers for you, but only while acting at the direction of, and within the scope of their duties for you. However, none of these volunteer workers is an insured for:

(1) "Bodily injury" or "personal injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to your other volunteer worker(s) or to your "employees" arising out of and in the course of their duties for you;
- (b) To the spouse, child, fetus, embryo, parent, brother, sister, domestic partner, or any member of the household of your volunteer workers or your "employees" as a consequence of SECTION II. 2. b. above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in SECTION II. 2. b. above; or

(d) Arising out of his or her providing or failing to provide professional health care or therapeutic services, advice or instruction. However, we will consider a volunteer worker to be an insured when providing:

- i. services of an optician;
- ii. hearing aid services, treatment, advice, or instruction, if your operations are those of a retail hearing aid establishment; or
- iii. pharmacy services, treatment, advice, or instruction, if your operations are those of a retail druggist or drugstore;

This section also applies to any Employee Benefits Liability Additional Coverage endorsement that is part of this policy.

(2) "Property damage" to property:

- (a) owned, occupied or used by,
- (b) Rented, leased or loaned to, in the care, custody of control of, or over which physical control is being exercised for any purpose by you, any of your other volunteer workers, any of your "employees," any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company);
- c. Any person (other than your "employee" or volunteer worker), or any organization while acting as your real estate manager.
- d. Any executor, administrator, trustee or beneficiary of your estate or living trust, while acting within the scope of their duties as such.

- e. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- f. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- g. An architect, engineer or surveyor engaged by you but only with respect to liability arising out of your premises or "your work." However, no architect, engineer or surveyor is an insured for any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of the rendering of or failure to render any professional services by or for you, including:
  - (1) The preparing, approving or failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; and
  - (2) Supervisory, inspection, or engineering services.
- h. If you are a Townhouse Association, each individual townhouse owner, but only with respect to liability as a member of the townhouse association and not with respect to any liability arising out of the ownership, maintenance, use or repair of the property to which the townhouse owner has title.
- 3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and

only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee," or fellow "leased worker" of the person driving the equipment or that co-"employee's" or fellow "leased worker's" spouse, child, fetus, embryo, parent, brother, sister, domestic partner, or any member of the household of that co-"employee" or fellow leased worker as a consequence of that injury; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
- 4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - b. Coverage does not apply to "bodily injury" or "property damage" that occurred, or to "personal injury" or "advertising injury" arising out of an offense committed, before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### **SECTION III - LIMITS OF LIABILITY**

1. The Limits of Liability shown in the Liability Coverage Part Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits."
2. The General Aggregate Limit is the most we will pay at each location listed in the Schedule of Premises for the sum of:
- a. Damages under SECTION I. A. except damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" and damage to premises rented to you or temporarily occupied by you with permission of the owner; and
  - b. Medical payments under SECTION I. B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under SECTION I. A. for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard."
4. Subject to SECTION III. 2. above, the Personal and Advertising Injury Limit is the most we will pay under SECTION I. A. for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to SECTION III. 2. or SECTION III. 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
- a. Damages under SECTION I. A.; and
  - b. Medical Payments under SECTION I. B.
- because of all "bodily injury" and "property damage" arising out of any one "occurrence."
6. Subject to SECTION III. 5. above, the Medical Payments Limit is the most we will pay under SECTION I. B for all medical expenses because of "bodily injury" sustained by any one person.

7. The Tenant Legal Liability Limit is the most we will pay under SECTION I. A. for all damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner.

The Limits of Liability in this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Liability.

## **SECTION IV - CONDITIONS**

### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### **2. Duties In The Event Of Occurrence, Offense, Claim Or "Suit"**

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. Notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c.** You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d.** No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### **3. Financial Responsibility Laws**

- a.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by this Coverage Part for "bodily injury" liability and "property damage" liability will comply with the provision of the law to the extent of the coverage and limits of insurance required by that law.
- b.** With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverages required by any motor vehicle law. We will provide the required limits for those coverages.

### **4. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a.** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b.** To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### **5. Other Insurance**

If valid and collectible "other insurance" is available to the insured for a loss we cover under SECTION I. A. of this Coverage Part, our obligations are limited as follows:

- a. Primary Insurance.**  
This insurance is primary except when SECTION IV. 5. b. below applies. If this insurance is primary, our obligations are not affected unless any of the "other insurance" is also primary. Then, we will share with all that "other insurance" by the method described in SECTION IV. 5. c. below.

- b. Excess Insurance.**

This insurance is excess over any of the "other insurance" whether primary, excess, contingent or any other basis that:

- (1)** Insures for direct physical loss of or damage to property;

- (2) Is available to the insured with respect to the conduct of any past partnership or joint venture; or
- (3) Is available to the insured for:
  - (a) Work or operations performed on the insured's behalf; or
  - (b) The insured's acts or omissions in connection with the general supervision of such work or operations.
- (4) Is available to the insured covering liability for damages arising out of the premises or operations for which you the insured has added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under SECTION I. A. to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Liability shown in the Liability Coverage Part Declarations.

#### **c. Method of Sharing.**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of all insurers.

#### **6. Representations**

By accepting this Coverage Part, you agree:

- a. The statements in the Declarations and Liability Coverage Part Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Part in reliance upon your representations.

#### **7. Separation Of Insureds**

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.